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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|---------------------|------------------|
| 09/305,786 | 03/13/2001 | Ronald Samuel Blackhurst | 3522 P 003 | 2836 |

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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|-----------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 09/805,786 | Applicant(s) BLACKHURST, RONALD SAMUEL | |
| | Examiner David L. Sorkin | Art Unit 1723 | |
| | | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/294,215.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: On page 3, line 26, "angels" should read - - angles - -.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 3 is rendered indefinite by the phrase "is used to power rotary lawn mowers". According to the specification, engines which are typically used to power lawn mowers are considered suitable for the instant invention. However, the purpose of an apparatus claim is to set forth a particular scope of structures, which is the invention (see MPEP 2114). The limitation "is used to power rotary lawn mowers" only confuses what scope of structures is being claimed. Clearly, a given individual engine is not going to be "used to power rotary lawn mowers" while it is being used to power the mixer which is the invention. Apparent, applicant is referring to an engine being 'of the type' which are "used to power rotary lawn mowers". However, it is unreasonable for one to consider all the engines which ever have been used to power rotary lawn mowers in order to determine the scope of instant claim 3. What if someone five years

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from now uses a new type of engine in a rotary lawn mower, would the scope of claim 3 then become broader? What if a type of engine could be used in a rotary lawn mower, but never has been? How different can an engine be from one which has been used in a lawn mower and still be within the scope of claim 3?

5. Likewise, claim 5 is rendered indefinite by the phrase "is used to power washing machines".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (US 4,294,548). Regarding claim 1, Watson ('548) discloses a barrel mixer comprising a rotary mixer barrel (25), a support for the rotary mixer barrel, the support comprising a tipping arrangement for the rotary mixer barrel between a mixing position in which the rotary mixer barrel is angled so as to retain its contents and a tipping position in which the rotary mixer barrel is angled so that that its contents are poured out, the support further comprising wheel (26) disposed proximate a bottom portion of the support; a motor (1) having an output shaft (8) aligned perpendicular to an axis of rotation of the rotary mixer barrel; a transmission (6,7,9,11,12,13,14,15,16,17,18) mounted on the support for rotating the rotary barrel, the transmission including step-down gearing between the motor and the rotary mixer barrel, the motor and gearing

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('401) teaches that electric and internal combustion motors are alternatives means for powering rotary barrel mixers (see col. 6, lines 12-17). See also the section 112 rejection of claim 3 above.

Response to Arguments

9. Applicant states that the claims have been amended to address the rejections under section 112; however, it appears that applicant has not addressed the rejections of claims 3 and 5.

10. Applicant's arguments with respect to the prior art moot in view of the new grounds of rejection.

Conclusion

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

May 7, 2002



**CHARLES E. COOLEY
PRIMARY EXAMINER**



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Remarks:

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